

CITY OF FAIRFIELD

RESOLUTION NO. 2015 - 27

**RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF FAIRFIELD AND CARDNO, INC., FOR ENVIRONMENTAL SERVICES FOR BIOLOGICAL MONITORING DURING THE CONSTRUCTION OF THE FAIRFIELD/VACAVILLE TRAIN STATION PROJECT**

**WHEREAS**, the City is proposing to construct the Fairfield-Vacaville Train Station Project ("Project"), which will include an overpass of the Union Pacific Railroad (UPRR) tracks, widening of Peabody Road to six lanes from Huntington Drive to Vanden Road, installation of 6,650 feet of new track, and construction of the platform, passenger amenities and site improvements for the train station; and

**WHEREAS**, the Project has obtained all of the necessary environmental permits from state and federal resource agencies for impacts to wetlands. In order to remain in compliance with these permits the City requires the services of a qualified biologist to provide biological monitoring during the construction of the project; and

**WHEREAS**, Cardno, Inc., has demonstrated that they are the most qualified environmental consultant to perform such services.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:**

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Fairfield that certain Consultant Services Agreement with Cardno, Inc., for environmental services for biological monitoring during the construction of the Fairfield/Vacaville Train Station Project in the amount of \$32,147.

Section 2. The Public Works Director is hereby authorized to execute and administer amendments in an amount not to exceed \$3,000, as needed.

**PASSED AND ADOPTED** this 17th day of February 2015, by the following vote:

AYES COUNCILMEMBERS: Price/Timm/Bertani/Moy/Vaccaro

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

ABSTAIN: COUNCILMEMBERS: NONE

  
MAYOR

ATTEST:

  
CITY CLERK

pw

## **CONSULTANT SERVICES AGREEMENT**

### **Construction Monitoring Services for the**

### **Fairfield/Vacaville Train Station (Project)**

THIS AGREEMENT made and entered into this 26<sup>th</sup> day of February 2015, by and between the City of Fairfield, a municipal corporation (the "CITY") and CARDNO, Inc., a Delaware corporation, ("CONSULTANT"), who agree as follows:

1) **SERVICES.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) **PAYMENT.** CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) **FACILITIES AND EQUIPMENT.** CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) **GENERAL PROVISIONS.** The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

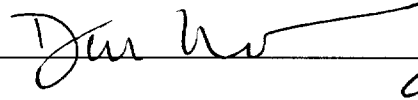
5) **INSURANCE REQUIREMENTS.** The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.


7) **TERM.** This agreement shall be in effect through December 1, 2016; or until the scope of work is completed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 26<sup>th</sup>  
day of February, 2015

City of Fairfield, a municipal corporation

By:  *GM*

CONSULTANT

By:   
Cardno, Inc.  
701 University Avenue, Suite 200,  
Sacramento, CA 95825

**EXHIBIT "A"**

**Fairfield Train Station Project**  
**Construction Monitoring Services**

**Phase 1 Construction Phase Services**

**Sub Phase 1.1 – Worker Environmental Awareness Training**

Prior to construction, a qualified biologist will conduct environmental awareness trainings for construction contractors. The name and credentials of a biologist qualified to act as a project biologist/construction monitor (i.e. Service-Approved Biological Monitor-SBM) will be submitted to the USFWS for approval at least 15 days prior to the commencement of work. Environmental awareness training will be given to construction personnel by the SBM biologist to brief them on how to recognize special-status species and/or habitat that could occur in the area. Environmental training pamphlets will also be available onsite for use by environmentally-trained foremen in training new personnel to the Project in the absence of the SBM. Construction personnel will also be informed about the repercussions of unmitigated impacts to vernal pools and their associated botanical and wildlife species. If special-status species are encountered in the work area, the SBM will inform the City that work in the vicinity must stop and agencies be notified for guidance before any construction activities are resumed. Depending on the species listing and persistence in the area, the SBM will notify the USFWS and/or CDFG for guidance. Each participant in the training will sign an attendance sheet that will be provided to the City for their records.

This task assumes three WEAP training sessions will be required. The first would occur prior to construction. The timing of the following training sessions would coincide with changes in construction personnel that may occur over the construction phase of the project (assumes additional sessions will occur at approximately six month intervals). If additional training visits are needed due to contractor turnover or other unforeseen circumstances, additional scope and budget will be required.

It is assumed that each training session will require approximately 3 hours of Staff Scientist time to complete. This includes time for preparation of materials (brochures or other handouts), travel to the site from the Cardno Sacramento office and back (standard mileage rates will also apply), and the time for the training itself.

**Cost: \$1,812**

**Sub Phase 1.2 –Avoidance Measure Inspection**

Prior to construction activities on the site, Cardno biologists will coordinate with the project contractor on the precise location of protective fencing, followed by an inspection of the completed fence. Fencing is to be installed a minimum of one foot (or greater, if feasible) from the edge of all vernal pools, vernal swales and other wetland habitat to be avoided in the immediate vicinity of the proposed construction areas. Prior to initiation of construction activities, Cardno ENTIRX will inspect the protective fencing to ensure that all wetland features have been appropriately protected.

This task assumes one inspection visit will be required. This task assumes a full day of Staff Scientist time, and a full day of Senior Project Scientist time which will include coordination with City contractors, monitoring during the installation process as well as a follow up inspection, preparation of a brief compliance report, and management. If compliance measure installation is staggered such that additional visits are needed, additional scope and budget will be required.

**Cost: \$2,646**

### **Sub Task 1.3 – Site Inspection and Construction Monitoring**

Cardno ENTRIX will provide biological monitors onsite to monitor construction activities that occur within 250 feet of a vernal pool or other seasonal wetland to ensure compliance with all conservation measures and applicable resource agency permits. It is assumed that monitoring will be necessary weekly during the first four months of construction, followed by biweekly inspections through the remainder of the construction period to confirm compliance measures remain in place.

Other duties of the biological monitors will include ensuring that spoil sites are located so they do not drain directly into seasonal wetlands or other features outside the construction area, and to ensure that staging and storage areas for equipment, materials, fuels, lubricants, and solvents will be located at a minimum distance of 100 feet from seasonal wetlands to be preserved.

This task assumes weekly monitoring during the first four months of construction (12 visits), followed by biweekly inspections for the remainder of the construction period (36 visits). Each monitoring visit will require approximately 4 hours of Staff Scientist time, which will include travel time to and from the site (from Sacramento), and time for inspection and monitoring of the site. Additional time for project management and coordination is also included in the total.

If compliance incidents or other unforeseen circumstances occur that require additional visits (particularly during the initial grading phase), additional scope and budget will be required.

**Cost: \$27,688**

**Total Cost: \$32,147**



Cardno Staff

Fairfield Train Station Construction  
Monitoring Services

Hourly Billing Rate, Markup, or Unit Cost:

\$ 149 \$ 103 \$ 93

Total Cardno Labor

Reimbursable Expenses  
(at cost)

Equipment Rentals 10%  
Meals 10%

TOTAL REIMBURSABLE EXPENSES  
(w/markup)

Unit Costs

Mileage \$ 0.560

MARKUP ON UNIT COSTS 10%

TOTAL UNIT COSTS

TOTALS

Phase 1 - Construction Phase Services

a. Worker Environmental Awareness Training	4	9	2	\$	1,709			\$	188	\$	9	\$	103	\$	1,812
b. Avoidance Measure Inspection	12	8		\$	2,612			\$	56	\$	3	\$	34	\$	2,646
Subtotal - Phase 1,1	16	17	2	\$	4,321	\$	-	\$	224	\$	13	\$	138	\$	4,459

a. Year 1 Weekly (4 months, 12 visits)	8	48	3	\$	6,415			\$	672	\$	38	\$	414	\$	6,829
b. Year 1 Biweekly (8 months, 12 visits)	8	48	5	\$	6,601			\$	672	\$	38	\$	414	\$	7,015
c. Year 2 Biweekly (12 months, 24 visits)	16	96	8	\$	13,016			\$	1344	\$	75	\$	828	\$	13,844
Subtotal - Phase 1,2	32	192	16	\$	26,032	\$	-	\$	2688	\$	151	\$	1,656	\$	27,688

Total Hours or Amounts	48	209	18		275.0	\$	-	\$	-		2912	\$	163	\$	1,794
Communication Fee								\$							
TOTAL PROJECT COST				\$	30,353			\$				\$	1,794	\$	32,147

## **EXHIBIT "B"**

### **PAYMENT**

1) For those services described in Exhibit A, compensation shall be on a time and material basis with a maximum fee not to exceed THIRTY TWO THOUSAND ONE HUNDRED FORTY SEVEN DOLLARS (\$32,147).

2) CONSULTANT shall submit, and CITY shall pay, monthly invoices for work performed during the previous month. For the time and material services billing shall be based on the hourly and fee rate charges set forth in 'Fairfield Train Station Construction Monitoring Services' Table included in Exhibit A, and on the number of hours expended on the PROJECT by each classification of employee. CITY shall pay CONSULTANT within 30 days following approval of invoice.

3) In the event PROJECT is terminated, CITY shall pay to CONSULTANT full compensation for work performed to date of written notification to cease work on the PROJECT.

4) Extra Work performed by the CONSULTANT for any work required by the CITY which is not specified in Exhibit A, including but not limited to, any changes to or re-performance of the CONSULTANT'S working including amendments to this AGREEMENT after the award of the contract by the CITY Council, and testimony in Court, shall be compensated by the use of the time and material fee rates shown in 'Fairfield Train Station Construction Monitoring Services' Table included in Exhibit A. No extra work will be compensated for unless required by the CITY in writing.



## EXHIBIT "C"

### GENERAL PROVISIONS

1) The rights and benefits under this Agreement are for the sole and exclusive benefit of the CITY and CONSULTANT and it shall not be construed that any third party has interest in this Agreement. Neither the CITY nor the CONSULTANT shall assign any rights or duties under this Agreement to a third party without the prior written agreement of both parties.

2) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall not have the right to control the conduct of CONSULTANT or any of CONSULTANT's employees except as herein set forth.

3) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

4) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

The parties hereto agree to immediately and diligently proceed with their respective duties as set forth herein to the end that the Project will be completed satisfactorily within the shortest reasonable time.

5) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, Limited Liability Corporation, non-profit corporation or other form of organization. If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor. If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

10) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

11) INDEMNIFY AND HOLD HARMLESS. To the fullest extent allowed by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

12)PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

13)LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

14)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

15)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship,

CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

## EXHIBIT "D"

### INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

#### 1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

#### 2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$\_\_\_\_\_
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$\_\_\_\_\_.

### 3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements

are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.